

EXHIBIT 4

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION**

UNITED STATES OF AMERICA,
Plaintiff,
v.

JAMES D. PIERON, JR.,
Defendant.

Case No. 18-cr-20489 (TLL) (PTM)
Hon. Thomas L. Ludington

DECLARATION OF FRED GAVIN

1. I am older than 18 years of age, have personal knowledge of the facts of this criminal tax case, and am competent to testify if called. My resume/curriculum vitae is attached hereto as **Exhibit A**.

2. I worked for the Internal Revenue Service for 43 years as a Revenue Agent and Appeals Officer. I was also a professor at Grand Valley State University teaching the Masters in Taxation Program.

3. The IRS conducted an investigation of James D. Pieron, Jr. over the course of I believe, seven years, from 2011 to 2018. During that investigation, the IRS was given access to bank accounts and interviewed a number of witnesses. To date, there is no evidence that Pieron failed to report any income, including for tax years 2008 and 2009.

4. In 2008 and 2009, Pieron did not have any capital gains under the Internal Revenue Tax Code as a result of investments made by Trevor Cook in JDFX related companies.

5. In 2008 and 2009, Cook wired investment funds directly to two JDFX entities. In turn, JDFX Holding AG issued stock directly to Cook. (A copy of the JDFX stock certificate issued to Cook is attached hereto as **Exhibit B**.) As evidenced by the stock certificate, it was not transferred to Cook by Pieron—it was issued directly from JDFX. (**Exhibit B**.)

6. On Pieron's 2008 and 2009 tax returns (and amended returns), Cook's investment in JDFX was improperly claimed as a capital gain. The transactions in 2008 and 2009 were not a taxable event with respect to Pieron.

7. If capital gains were removed from the 2008 and 2009 tax returns (and amended returns) filed by Pieron in 2011 (and 2012), Pieron would have no tax liability for 2008 and 2009. *See* attached as **Exhibit C**.

8. I was retained as an expert witness to testify at the trial of Pieron. Pieron's former trial counsel never asked me to examine or investigate the details of the underlying transactions that created the capital gains claimed on Pieron's 2008 and 2009 tax returns. Trial counsel operated under the assumption that Pieron had capital gains in 2008 and 2009, which we now know is wrong.

I swear under the penalty of perjury that the foregoing is true and correct.


Fred Gavin

Fred Gavin

Date: May 13, 2019

EXHIBIT A

Frederick L. Gavin

1342 Granada Drive N.W.
Grand Rapids, MI 49534

Home: (616) 791-9842
Cell: (616) 485-1911

fred.l.gavin@gmail.com
gavinf@gvsu.edu

OBJECTIVE

Experienced Senior Level Appeals Officer GS-15 and Technical Guidance Coordinator with extensive tax administration and technical experience in the most complex issues containing multiple tax disciplines seeks continued adjunct professor in taxation position

EXPERIENCE:

- Since retirement from IRS have worked as confidential tax consultant with several clients and firms; I have been retained as expert witness on several cases;
- United States Department of Treasury IRS from September 10, 1969 to May 3, 2012 (retired with 43 years' service – last 33 years in Appeals Division);
- Retired as, GS-15 Appeals Team Case Leader managing 15 teams of senior technical Appeals specialist or approximated 50 employees. Ending salary \$155,000, plus bonuses;
- Served as Appeals Officer and Technical Guidance Coordinator since June 5, 1979
- Recipient of *2006 Appeals Officer Of the Year* award and received over 40 Service or Treasury monetary awards



Appeals Officer of Year Award.pdf

- Rated outstanding or 5.0 for last six years
- "Resolved" over 10,000 cases or 25,000 issues (approximately 500 cases were docketed in the United States Tax Court) in 33-plus years in Appeals, containing a wide gamut of tax issues: income, employment, excise, fraud, incoming tax and accounting, inventory (LIFO and FIFO), insurance, international, collection and hundreds of formal closing agreements under IRC Sec. 7121
- Have been the principle Revenue Agent or Appeals Officers on over 50 reported federal tax cases and have been a witness in both civil and criminal tax cases;

Appeals Officer/Technical Guidance National Program Coordinator Responsibilities

- Motor Vehicle Industry Coordinator - since 1990;
- Inventory Coordinator (FIFO and LIFO) - since 1990;
- Aerospace/Defense Industry Coordinator– since February 2005;
- Hi-Tech /Computer Industry Coordinator – since February 2005;
- Producer Owned Reinsurance Companies (PORC), IRC Sections 482 and 845 – since 1992;
- Notice 2003-35 "Stuffed/Overcapitalize" PORCs, IRC Section 501(c) (15) exempt insurance - 2005;
- Industry Issue Resolution (IIR) Coordinator for Appeals – since 2001;
- SB/SE Fast Track Settlement Implementation Team Member/Instructor – since inception;

Motor Vehicle Industry - Redacted Appeals Settlement Guidelines (ASG) authored by Fred Gavin

- Remanufacturers' inventory of cores
- Excess Parts Inventory
- Dollar-Value LIFO - definition of an item

Inventory Issues - Appeals Settlement Guidelines (ASG) authored by Fred Gavin

- Dollar Value LIFO: segments of inventory

- Dollar Value LIFO: bargain purchase inventory
- Dollar-value LIFO: Earliest Acquisition Method

Listing of industries or issues responsibility from the Appeals web site – Records: 1 – 16 of 16

#	Issue Name	UIL	Issue Type	R&C	
1	Aerospace	--N/A--	CCI	Yes	Details
2	Computer Software in Process R&D	N/A	EM	No	Details
3	Data Processing/High Technology – Capitalization of Lease Related Expenses	263.08-05	CCI	Yes	Details
4	Dollar-value LIFO – Definition of an Item (Motor Vehicles)	472.08-02	CCI	Yes	Details
5	Excess Parts Inventory (Motor Vehicles)	471.02-04	CCI	Yes	Details
6	Extended Service Contracts – Motor Vehicle	N/A	EM	No	Details
7	Extraterritorial Income (ETI) Exclusion	923.01-01	ACI T2	Yes	Details
8	IRC § 501©(15) – Tax Exempt Small Insurance Company Transactions	N/A	EM	No	Details
9	ISO/QS 9000 Costs (Motor Vehicles)	N/A	EM	No	Details
10	LIFO and Remanufactures of Cores Inventory (Motor Vehicles)	N/A	EM	No	Details
11	Producer Owned Reinsurance Company (PORC) and Related Penalties	N/A	EM	No	Details
12	Remanufacturers Inventory of Cores (Motor Vehicles)	471.01-03	CCI	Yes	Details
13	Service Technician Tool Reimbursements (Motor Vehicles)	62.15-00	CCI	Yes	Details
14	Sub-prime Financing (Motor Vehicles)	N/A	EM	No	Details
15	Tax Exempt Small Insurance Company Transactions Notice2003-35	501.15-00	ACI	Yes	Details
16	Valuation of Parts Inventory (Motor Vehicles)	N/A	EM	No	Details

Examples of successful reported LIFO cases worked as the Appeals Officer or in capacity as Technical Guidance Coordinator for inventory issues

- *Consolidated Manufacturing*, 249 F.3d 1231 (10th Cir. 2001), *rev'd in part*, 111 T.C. 1 (1998)
- *Kohler Industries v. U.S.*, 34 Fed. Cl. 379, affd 124 F3d 14
- *La Crosse Footwear v. U.S.*, 191 F3d 1372
- *Mountain States Ford Truck Sales, Inc. v. Commissioner*, 112 T.C. 58
- *Richardson Investments, Inc. v. Commissioner*, TC Memo 1996-368
- *Boecking v. Commissioner*, TC Memo 1993-497
- *Huffman v. Commissioner*, 126 T.C. No. 17

Other high profile or National IRS cross-functional experiences

- Participated in over 50 LMSB Fast Track cases and 25 Post Appeals Mediation cases
- Expertise in employment tax and served on the Services, *Worker Classification Employment Tax Design Team*
- Handled and settled the three largest ever employment tax cases on IRC Section 132 working condition fringe benefit issue (over \$1 billion in dispute)
- Co-authored Appeals training text on *Trust Fund Recovery Taxes* (formerly 100% Penalty) relative to IRC Section 6672 and taught several classes; resolved over 200 Appeals collection cases involving IRC Section 6672 (*Trust Fund Recovery*) or IRC Sec. 7122 (*Offer-in-Compromise*)
- Worked with Joint Committee on Taxation on evaluating and reviewing heavy manufacturing emerging, coordinated and other issues of interest
- Member of several *Issue Management Teams* ("IMT")
- Member of the Appeals and SB/SE Fast Track Settlement design team and assisted in drafting Announcement 2006-61

- Dozens of Exam, Appeals and Counsel teaching assignments, including formal classes and Continuing Professional Education (CPE)
- Co-instructed September 24-31, 2007 formal Appeals mediation class with Commissioners from the Federal Mediation and Conciliation Service
- [2nd PPT GR TEI Appeals 5-12-11](#) www.tei.org/.../2nd%20PPT%20GR%20TEI%20Appeals%205-12-11.ppt... West Michigan TEI / IRS Meeting, May 12, 2011. By: Fred Gavin, Appeals Team Case Leader, Detroit Appeals Office. (313) 628-3005. Fred.l.gavin@irs.gov.
- <http://www.forbes.com/sites/janetnovack/2014/11/03/irs-memo-claims-forbes-story-improperly-influenced-tax-exempt-decision/> ... (Frederick L. Gavin, the now retired leader of the three man appeals team ... Gavin memo...)

Industry Issue Resolution ("IIR") project that cumulated with Internal Revenue Bulletin official pronouncements and coordinate the IIR for the Appeals Division

- [Revenue Procedure 2006-14](#) provides a safe harbor to heavy equipment dealers for use of replacement costs of parts.
- [Revenue Ruling 2004-80](#) applies the primarily designed test in section 145.4051-1(e)(1) and (2) of the Temporary Excise Tax Regulations Under the Highway Revenue Act of 1982 (Pub. L. 97-424) for purposes of determining whether a vehicle is a truck or a highway tractor.
- [Revenue Procedure 2003-20](#) provides a safe harbor method of accounting (the "Core Alternative Valuation" (CAV) method) for remanufacturers' and rebuilders of motor vehicle parts ("remanufacturers") and resellers of remanufactured and rebuilt motor vehicle parts ("resellers") that use the lower of cost or market (LCM) inventory valuation method to value their inventory of cores held for remanufacturing or sale.
- [Revenue Procedure 2001-56](#) provides simplified methods auto dealerships can use to determine the dollar amount to be included in, or excluded from, the income of employees provided with vehicles by the dealerships.
- [LIFO Pooling issue](#): In-Process Project at this time: Accounting Issue for Automobile Dealers To Be Addressed by IRS Industry Issue Resolution Program:
<http://www.irs.gov/newsroom/article/0,,id=168048,00.html>

Examination Division – Internal Revenue Agent September 10, 1969 to June 5, 1979 in the Detroit District

- GS-13 Internal Revenue Agent/Team Coordinator LMSB (formerly Large Case or CEP) 1975-1979
- Special Enforcement Program Internal Revenue Agent assigned to the Detroit Federal Strike Force on Organized Crime and Narcotic Trafficking 1970-1975

Grand Valley State University Experience

- Adjunct professor in taxation in a master of science in taxation (MST) program at Grand Valley State University in Grand Rapids, Michigan for last 20 years
- Taught dozens of graduate courses in *Federal Tax Practice and Procedure*, *Tax Accounting* and undergraduate tax: basic individual and corporate (partnership, trust and S-corps) for accounting majors;
- Masters in Tax and Accounting Advisory Board at Grand Valley State University since 1988 to present;
- <http://www.gvsu.edu/business/index.cfm?id=000AC304-E04D-1EDC-993580E715660000>
- <http://www.gvsu.edu/business/index.cfm?id=000C9C89-E178-1EDC-993580E715660000>

Community Service Experience

- Member of the board of directors for the Grand Rapids Catholic Secondary Schools (1995-2000): <http://www.grcss.org/>
- Past President - St. Anthony's Elementary School Board

- Past Finance Chairman - St. Anthony's Parish
- Organ donor (kidney)

Education

- Master of Science in Taxation (1981) Grand Valley State University, Grand Rapids, Michigan
- Bachelor of Business Administration (1969), Western Michigan University, Kalamazoo, Michigan
- Associate of Arts, Grand Rapids Community (Junior) College (1967), Grand Rapids, Michigan
- West Catholic High School (1965), Grand Rapids, Michigan.

EXHIBIT B

JDFX HOLDING AG

Share Certificate

Certificate number: 1a

Number of shares: 3,500,000

Incorporated under the Code of Obligation of Switzerland

Authorised Shares: 10,000,000 Registered Shares.

THIS IS TO CERTIFY THAT "Market Shot LLC, 12644 Tiffany Court, Burnsville, MN 55337, USA" is the Registered Holder of 3,500,000 (Three Million Five Hundred Thousand) Shares in the above-named Company, subject to the Memorandum and Articles of Association of the said Company.

Given under the Common Seal of the Company
This 1st day of June 2009

JDFX Holding AG

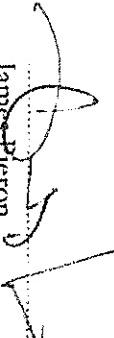

James Pieron
(Chairman)

EXHIBIT C

PLACEHOLDER FOR DOCUMENT
TO BE SEALED PURSUANT TO LR
5.3(b)(3)(B)(iii)